

**Thomas R. Johnson**, OSB No. 010645  
TRJohnson@perkinscoie.com  
**Kristina J. Holm**, OSB No. 112607  
KJHolm@perkinscoie.com  
**Misha Isaak**, OSB No. 086430  
MIsaak@perkinscoie.com  
PERKINS COIE LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
Telephone: 503.727.2000  
Facsimile: 503.727.2222

**Jennifer Middleton**, OSB No. 071510  
JMiddleton@jjlslaw.com  
JOHNSON JOHNSON & SCHALLER PC  
975 Oak Street, Suite 1050  
Eugene, OR 97401  
Telephone: 541.683.2506  
Facsimile: 541.484.0882

Cooperating attorneys on behalf of the  
ACLU Foundation of Oregon, Inc.

Attorneys for Plaintiffs Rummell, West, Chickadonz, Tanner, and Basic Rights Education Fund

**Kevin Díaz**, OSB No. 970480  
KDiaz@aclu-or.org  
ACLU FOUNDATION OF OREGON, INC.  
P.O. Box 40585  
Portland, OR 97240  
Telephone: 503.227.6928  
Facsimile: 503.227.6948

**Rose Saxe** \*  
RSaxe@aclu.org  
**Amanda Goad** \*  
AGoad@aclu.org  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: 212.549.2627  
Facsimile: 212.549.2650

\* Pro hac vice applications pending

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

PAUL RUMMELL and BENJAMIN WEST;  
LISA CHICKADONZ and CHRISTINE TANNER;  
BASIC RIGHTS EDUCATION FUND,

*Plaintiffs,*

v.

JOHN KITZHABER, in his official  
capacity as Governor of Oregon; ELLEN  
ROSENBLUM, in her official capacity as Attorney  
General of Oregon; JENNIFER WOODWARD, in  
her official capacity as State Registrar, Center for  
Health Statistics, Oregon Health Authority, and  
RANDY WALDRUFF, in his official capacity as  
Multnomah County Assessor,

*Defendants.*

No. 6:13-cv-02256-TC

**MEMORANDUM IN SUPPORT OF  
MOTION TO CONSOLIDATE**

Pursuant to Fed. R. Civ. P. 42

By Plaintiffs Paul Rummell,  
Benjamin West, Lisa Chickadonz,  
Christine Tanner, and  
Basic Rights Education Fund

DEANNA L. GEIGER and JANINE M. NELSON;  
ROBERT DUEHMIG and WILLIAM GRIESAR,,

No. 6:13-cv-01834-MC

*Plaintiffs,*

v.

JOHN KITZHABER, in his official  
capacity as Governor of Oregon; ELLEN  
ROSENBLUM, in her official capacity as Attorney  
General of Oregon; JENNIFER WOODWARD, in  
her official capacity as State Registrar, Center for  
Health Statistics, Oregon Health Authority, and  
RANDY WALDRUFF, in his official capacity as  
Multnomah County Assessor,

*Defendants.*

Plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund respectfully request that the Court consolidate the action captioned *Rummel et al. v. Kitzhaber et al.*, No. 6:13-cv-02256-TC, with the previously-filed action captioned *Geiger et al. v. Kitzhaber et al.*, No. 6:13-cv-01834-MC.

### **BACKGROUND**

Plaintiffs Deanna L. Geiger, Janine M. Nelson, Robert Duehmig, and William Griesar initiated an action on October 15, 2013, against defendants John Kitzhaber, Ellen Rosenblum, Jennifer Woodward, and Randy Wuldruff, all named in their official capacities, pursuant to 42 U.S.C. § 1983, alleging that the state of Oregon's exclusion of same-sex couples from civil marriage violates their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution. These plaintiffs are represented by attorneys Lake Perriguet and Lea Ann Easton. On December 4, 2013, they filed an amended complaint. Defendants Kitzhaber, Rosenblum, and Woodward, all state officials represented by the Oregon

Department of Justice, filed their answer on December 13, 2013. Defendant Randy Wuldruff has not yet appeared or answered.

Yesterday, on December 19, 2013, plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund initiated a separate action raising substantially similar claims against the same defendants. They are represented by attorneys from Perkins Coie LLP in Portland, Johnson Johnson & Schaller PC in Eugene, the ACLU Foundation of Oregon, Inc., and the national American Civil Liberties Union Foundation. With this motion, plaintiffs Rummell, West, Chickadonz, Tanner, and Basic Rights Education Fund seek consolidation of the two actions.

## **DISCUSSION**

### **I. Consolidation is Warranted For Actions Before the Same Court Involving Common Questions of Law and Fact**

Federal Rule of Civil Procedure 42 provides: “If actions before the court involve a common question of law or fact, the court may ... consolidate the actions.” Fed. R. Civ. P. 42(a)(2). “The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.” *In re TMI Litigation*, 193 F.3d 613, 724 (3d Cir. 1999) (internal quotation omitted). “[C]onsolidation of separate actions presenting a common issue of law or fact is permitted under Federal Rule 42 as a matter of convenience and economy in judicial administration.” 9A Wright & Miller, *Federal Practice & Procedure* § 2383 (3d ed. 2013). “The district court is given broad discretion to decide whether consolidation under Rule 42(a) would be desirable ....” *Id.* Further, “[t]he consent of the parties is not required by the rule to accomplish the consolidation. Rather, it is for the district court to weigh the saving of time and effort that consolidation under Rule 42(a) would produce against any inconvenience, delay, or expense that it would cause for the litigants and the trial judge.” *Id.*

Civil rights cases brought by separate plaintiffs alleging the same or similar constitutional violations against common defendants are often appropriate for consolidation. For instance, in *Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491 (N.D. Ill. 1983), the district court sua sponte consolidated two actions both charging racial discrimination in allocation of public park resources, despite that one of the actions also asserted a claim for employment discrimination in the park district and one of the parties opposed consolidation. *Id.* at 499-500. Courts have also consolidated civil rights actions brought by separate prisoners alleging similar violations arising from improper prison conditions. *E.g.*, *Anderson v. Spizzioti*, No. 11-5663, 2012 WL 1268346, \*1-3 (E.D.N.Y. Apr. 10, 2012); *Lynch v. DeMarco*, No. 11-2602, 2012 WL 1429211, \*1-2 (E.D.N.Y. Jan. 23, 2012).

Here, consolidation is appropriate because the cases involve common issues of law and fact. The plaintiffs in the *Geiger* and *Rummel* actions have sued the same defendants for the same legal claims arising from substantially similar facts. In both cases, two same-sex couples seek the same relief: the freedom to marry in Oregon. It would certainly “streamline and economize pretrial proceedings,” “avoid duplication of effort,” and “prevent conflicting outcomes,” *TMI Litigation*, 193 F.3d at 724, if these actions are consolidated. Further, consolidation will not prejudice any party. In the *Geiger* action, the plaintiffs filed their complaint just two months ago, amended their complaint just 16 days ago, the state-official defendants filed their answer just last week, and defendant Wuldruff has not yet filed an answer. To date, no issues in that action have been litigated or adjudicated. Thus, the two actions can easily proceed on the same schedule in one consolidated proceeding.

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## CONCLUSION

For these reasons, plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund respectfully request that the Court consolidate the *Geiger* and *Rummel* actions.

DATED: December 20, 2013

*s/ Thomas R. Johnson*

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**Thomas R. Johnson**, OSB No. 010645

TRJohnson@perkinscoie.com

**Kristina J. Holm**, OSB No. 112607

KJHolm@perkinscoie.com

**Misha Isaak**, OSB No. 086430

MIsaak@perkinscoie.com

Perkins Coie LLP

Telephone: 503.727.2000

**Jennifer Middleton**, OSB No. 071510

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**Kevin Díaz**, OSB No. 970480

ACLU Foundation of Oregon, Inc.

KDiaz@aclu-or.org

Telephone: 503.227.6928

**Rose Saxe\***

RSaxe@aclu.org

Telephone: 212.549.2627

**Amanda Goad\***

AGoad@aclu.org

Telephone: 213.977.5244

American Civil Liberties Union Foundation

Attorneys for Plaintiffs Rummell, West,  
Chickadonz, Tanner, and Basic Rights  
Education Fund

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